



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY FIRST CLASS MAIL

MAR - 7 2013

Brett Kappel, Esq.
Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 6725
(formerly RR 12L-82)

Dear Mr. Kappel:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting Ron Paul 2012 Presidential Campaign Committee, Inc. and Lori Pyeatt in her official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On August 30, 2012, the Committee was notified that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 2 U.S.C. § 437g. On February 26, 2013, the Commission found reason to believe that the Committee and Lori Pyeatt in her official capacity as treasurer violated 2 U.S.C. § 434(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

Please note that the Committee has a legal obligation to preserve all documents, records, and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Ron Paul 2012 Presidential Campaign
Committee, Inc. and Lori Pyeatt in
her official capacity as treasurer

MUR 6725
(formerly RR 12L-82)

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

On January 31, 2012, and April 18, 2012, the Committee filed amendments to its 2011 October Quarterly Report, which disclosed additional receipts not included in the original report. On February 20, 2012, and April 18, 2012, the Committee filed amendments to its 2011 Year-End Report, disclosing additional receipts and disbursements; the second amended report disclosed no change in receipts and disbursements from the previously filed amendment. The additional activity not included in the original reports is reflected in the chart below.

Report	Date of Final Amendment	Increased Receipts	Increased Disbursements	Total
2011 October Quarterly	April 18, 2012	\$1,700	NA	\$1,700
2011 Year-End	April 18, 2012	\$500,000	\$5,649.65	\$505,649.65
	TOTAL	\$501,700	\$5,649.65	\$507,349.65

On March 14, 2012, RAD sent the Committee a Request for Additional Information ("RFAI"), asking the Committee to "provide an explanation to clarify why this additional activity was not provided with your original" 2011 October Quarterly and Year-End Reports.

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Responding to the RFAI, the Committee filed a Miscellaneous Document ("Form 99") on April 18, 2012, stating that:

The increase in receipts of \$1,700.00 and increase in disbursements of \$1,700.00 on the 2011 October Quarterly Amended Report consists of seven in-kind contributions that were inadvertently left off of the original filing.¹

The increase in receipts of \$500,000.00 on the 2011 Amended Year-End Report is a committee transfer from the Committee to Re-Elect Ron Paul that was inadvertently left off of the original filing. The amended report was filed to properly report this transfer.

The increase in disbursements of \$5,649.65 on the 2011 Amended Year-End Report is the net effect of corrections made regarding expenses. All expenses requiring to be itemized now show on the amended filing.²

On May 17, 2012, the Committee filed another Form 99, which stated:

This letter is to provide additional information regarding the initial unreported committee transfer of \$500,000 on December 1, 2011 received by the Ron Paul 2012 Presidential Campaign Committee, Inc. from the Committee to Re-Elect Ron Paul. The transmission of the transfer by the Committee to Re-Elect Ron Paul was correctly reported on their 2011 Year-End Report, but the receipt of that transfer was inadvertently omitted from the Ron Paul 2012 PCC's 2011 Year-End Report. A report was corrected, amended and filed upon discovery of the omission within three weeks of the original filing. Both committees have reviewed and

¹ The \$1,700 figure reflects the contribution of a gold coin jointly owned by seven individuals. See discussion *infra*. In-kind contributions are normally reported as both receipts and expenditures under 11 C.F.R. § 104.13(b) so that cash-on-hand will not be inflated. In order to avoid double-counting, the gold coin is treated here only as a receipt.

² On April 20, 2012, the Committee filed a Form 99, which stated:

While preparing a response to the recent RFAI letters, the Campaign discovered a significant amount of instances in which contributors provided slightly different name and/or address information when making online contributions that prevented their contributions from being aggregated correctly in the computer database records. The campaign has corrected those errors and taken steps to minimize the likelihood that problem will occur in the future. Amended reports have been filed from the inception of the Campaign to date to correct those reporting discrepancies.

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revised their procedures for handling and reporting committee transfers to ensure that this error will not be repeated.

RAD referred the Committee to OGC for failing to disclose additional receipts totaling \$501,700 and additional disbursements totaling \$5,649.65. On August 28, 2012, OGC notified the Committee of the Referral in accordance with the Commission's procedure regarding notification in non-complaint generated matters. See 74 Fed. Reg. 38617 (Aug. 4, 2009). In its response to the notification, the Committee provided information regarding the circumstances surrounding the increased activity disclosed on its amended reports that supplemented the information it had provided on the Form 99s. See Letter to Jeff S. Jordan, FEC, from Brett G. Kappel (Oct. 12, 2012) ("Response").

According to the Committee, the additional receipts of \$1,700 on the 2011 October Quarterly Report reflect the contribution of a gold coin. *Id.* at 4. The Committee acknowledges that, according to Commission advisory opinions and regulations, a coin that is not U.S. currency should be treated as an in-kind contribution of a commodity to be liquidated, valued at the fair market value of the commodity on the date it was received by the Committee and reported during the reporting period in which the coin was received, even if it has not been liquidated by the end of the reporting period. *Id.* (citing Advisory Opinions 1980-125 (Cogswell) and 1987-32 (Polster) and 11 C.F.R. § 104.13(b)(1)). The Committee asserts, however, that when the Committee's staff prepared the original 2011 October Quarterly Report, it "was under the impression" that the in-kind contribution was not reportable until it was liquidated. *Id.* When the treasurer and staff were preparing the 2011 Year-End Report, they noted the in-kind

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contribution was an unresolved issue, consulted with counsel, and amended the 2011 October Quarterly Report. *Id.*

In its Response, the Committee also explained the omitted receipt of the \$500,000 transfer from another committee that has the same treasurer and campaign staff. The Response states that during the preparation of the original 2011 Year-End Report, campaign staff remembered entering the information regarding the transfer into the computer system used by both committees and "incorrectly thought that the information had been entered as a receipt" from the transferring committee and would be reflected on the Committee's report.³ *Id.* at 2-3.

The Response maintains that the increased activity referenced in the Referral does not justify opening a MUR as the Committee amended its reports before RAD raised any question concerning their accuracy. The Committee notes that it amended its report with respect to the omitted \$500,000 receipt within three weeks of the original report and additionally notes that the transferring committee had reported it as an expenditure on its 2011 Year-End Report two weeks before the Committee's 2011 Year-End Report was due. *Id.* at 5. Moreover, according to the Response, the filing of the amended 2011 October Quarterly and Year-End Reports "fit squarely within the Commission's Best Efforts Statement of Policy and, accordingly may not be the basis for an enforcement action." *Id.* The Committee asserts that it was able to amend its incorrect reports promptly "precisely because" the Committee had met the best efforts requirements, in particular because the Committee had trained its staff to double check its recordkeeping entries and regularly reconcile the Committee's records with bank statements. *See id.* at 5-6.

³ The Response also notes that, although this one transaction was omitted from the 2011 Year-End Report, that report was over 10,000 pages long and disclosed "tens of thousands of individual transactions, including more than \$13,000,000 in receipts." Response at 2.

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. The Act also requires committees to disclose itemized breakdowns of receipts and to disclose the name and address of each person who has made any contribution in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution. *See* 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(b)(3)-(4).

The Act provides that "when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act . . ." 2 U.S.C. § 432(i); and 11 C.F.R. § 104.7(a). The Commission has noted that it would consider the best efforts of a committee under 2 U.S.C. § 432(i) when reviewing all violations of recordkeeping and reporting requirements of the Act, whether arising in its traditional enforcement docket, audits, or the ADR program. *See Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act*, 72 Fed. Reg. 31438, 31440 (June 7, 2007) ("Best Efforts Policy Statement"). The Commission has stated that the "best efforts standard is an affirmative defense and the burden rests with the political committee and its treasurer to present evidence sufficient to demonstrate that best efforts were made." *Id.*

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Contrary to the assertions in the Response, except for amending its original reports, the Committee has made an inadequate showing that its actions “squarely fit” the Commission’s Best Efforts Policy Statement. The focus of the Committee’s “best efforts” defense argument rests entirely on the steps taken after it filed its original reports. The Response, however, makes no mention of the actions employed by its staff, and in particular, its treasurer, to ensure the accurate disclosure of its receipts and disbursements during the time it prepared the original reports. The Commission has specifically noted that it would take into consideration certain factors in determining whether the “best efforts” defense standards have been satisfied, including: (1) whether the committee *at the time of its failure* took relevant precautions to prevent a reporting failure; (2) whether the committee had trained staff responsible for obtaining, maintaining, and submitting campaign finance information in the Act as well as the committee’s procedures, recordkeeping systems, and filing systems; (3) whether the reporting failure was the result of unforeseen circumstances beyond the control of the committee; and (4) whether, upon discovering the failure, the committee took all reasonable additional steps to expeditiously file any unfiled reports and correct any inaccurate report. *Id.* at 31440 (emphasis added).

As indicated in the Commission’s Best Efforts Policy Statement, the “best efforts” defense takes into consideration actions taken to avoid reporting errors and omissions and incomplete recordkeeping, not solely actions taken to correct errors after the fact. In applying the defense, the Commission has required that more specific proactive efforts be undertaken by a committee prior to the occurrence of a filing lapse than has been demonstrated by the Committee in this matter. See MUR 6508 (Republican National Committee), Factual and Legal Analysis 5-6 (rejecting the application of the best efforts defense where the Respondents did not take relevant precautions to prevent a reporting failure at the time of the original report filings). For

example, while the Response speaks of the Committee's prompt corrective actions taken after discovering the omitted reporting of \$500,000 in receipts, it does not address whether the Committee took the relevant precautions (such as double checking recordkeeping entries and reconciling records) at the time of its failure or whether the Committee had maintained adequate procedures and filing systems to avoid the reporting errors on its original 2011 Year-End Report. The only information about the pertinent time-period provided in the Response is that, when preparing the original report, the staff remembered it had entered information into the computer regarding the \$500,000 transfer from the transferring committee, and it incorrectly thought the information had also been entered as a receipt by the Committee. See Response at 2-3.

Likewise, with respect to omitting the \$1,700 in-kind contributions on its original 2011 October Quarterly Report, the Response states that at the time the Committee was preparing that report, its campaign staff was under the misimpression that the contributions were not reportable. Only when they were later preparing the 2011 Year-End Report did the treasurer and the campaign staff note the "in-kind contribution as an unresolved issue and consult with counsel regarding" it, which led to the amendments. Response at 4. The Commission has stated, however, that a "committee's failure to know or understand the recordkeeping and filing requirements of the Act" does not satisfy the best efforts defense. Best Efforts Policy Statement, 72 Fed. Reg. at 31440. Moreover, the Committee does not assert that the reporting failures resulted from any unforeseen circumstances and it does not appear they did so.

In short, the Committee concededly made errors when it filed its original 2011 October Quarterly and Year-End Reports. The Best Efforts Policy Statement provides that the Commission will generally conclude that a committee has not met the best efforts standards if its reporting failures result from, among other things, the inexperience, negligence or error of

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committee staff, and failure on the part of the Committee to know the recordkeeping and filing requirements of the Act. 72 Fed. Reg. at 31440. Accordingly, the Commission concludes that the Committee has not met the best efforts standard in this matter.

As the Committee acknowledges, it did not comply with the Act's reporting requirements when it failed to disclose a total of \$501,700 in receipts and \$5,649.65 in disbursements on its original 2011 October Quarterly and Year-End Reports. Therefore, the Commission finds reason to believe that the Committee violated 2 U.S.C. § 434(b).

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